## SEARCH & SEIZURE The Year in Review

Rebecca S. McClure Boone Superior Court #2

## WARRANTLESS SEARCHES SEARCH WARRANT SEARCHES

# WARRANTLESS SEARCHES QUESTION #1 WHAT LAW APPLIES?

# Overstreet v. State (Ind. Ct. App. 2000) 3 CATEGORIES OF POLICE-CITIZEN INTERACTION

CONSENSUAL ENCOUNTER
INVESTIGATIVE DETENTION
ARREST



CONSENSUAL ENCOUNTER – Casual and brief inquiry of a citizen that involves neither an arrest nor a stop

INVESTIGATIVE DETENTION – Must be based on specific and articulable facts giving rise to a reasonable belief that criminal activity "may be afoot" – A *Terry* stop

#### WHY DOES IT MATTER?

**CONSENSUAL ENCOUNTER –** 

No Fourth Amendment Scrutiny

**INVESTIGATIVE DETENTION –** 

Fourth
Amendment
Rights Violated?

#### **TEST**

Considering all facts and circumstances surrounding the encounter, did suspect entertain reasonable belief he/she "free to leave" or decline officer's request or otherwise terminate encounter



# CONSENSUAL ENCOUNTERS

### Cochran v. State (Ind. Ct. App. 3/17/06)

Defendant Seized? 8 Objective Question

Requesting Identification S Seizure



### Cochran v. State (cont'd)

Art 1 Sec 11 Indiana Constitution "Totality of the Circumstances"

Degree of Intrusion into Citizen's Ordinary Activities

and

Basis Upon Which Subject of Search Selected

### "Reasonable" Under Indiana Constitution

- Degree of concern, suspicion or knowledge violation has occurred;
- 2. Degree of intrusion the method of search or seizure imposes; and
- 3. The extent of law enforcement needs



#### State v. Lefevers (Ind. Ct. App. 3/27/06) trans. denied

Approaching Defendant and talking 

Seizure

Earliest Point of Seizure & "Submit to Breath Test?" and Asked to Exit Vehicle

Art 1 Sec 11 – NO VIOLATION"

"Reasonable"



### Scott v. State (Ind. Ct. App. 11/3/06)



## Private v. Public Property Fourth Amendment Not Implicated

# "REASONABLE SUSPICION" REQUIRED

**Barrett** v. State (Ind. Ct. App. 11/22/05)

#### NO VIOLATION FOURTH AMENDMENT

### REASONABLE UNDER ARTICLE 1 SECTION 11

### Cannon v. State (Ind. Ct. App. 12/1/05)

"Reasonable Suspicion" & facts known at moment of stop + reasonable inferences

✓ ordinarily prudent person believe criminal activity

has or is about to occur

**Erratic Driving – School & Construction Zone** 



**Hiding Gin Bottle + Alcohol on Breath** 

☑ Reasonable Suspicion Driving While Intoxicated

NO FOURTH AMENDMENT VIOLATION

### Cannon v. State (cont'd)

Officer's Actions Reasonable No Violation Article 1 Sec. 11

## Johnson v. State (Ind. Ct. App. 12/30/05) Published 2/15/06

Into parked car with no license plate

Failed to provide SSN

No Reasonable Suspicion

### Johnson v. State (cont'd)

But for unlawful investigatory stop – would not have been searched & contraband would not have been found

**Fourth Amendment Rights Violated** 

**VIOLATION OF ARTICLE 1, SECTION 11** 

### Campbell v. State (Ind. Ct. App. 2/1/06)

#### **ISSUE OF FIRST IMPRESSION**

#### Illumination & Seizure?



While Illuminated . . . Crouched down Pulled shiny object from waistband Tossed object under car

No sirens or flashers
Not ordered to stop
No display of weapons
No threatening presence of Law Enforcement
No touching

CT: Shining Spotlight Alone Seizure

Gun B Abandoned Property
No Fourth Amendment Protection

**Gun Properly Admitted Into Evidence** 

### Powell v. State (Ind. Ct. App. 2/6/06)



GR: Anonymous Tip Alone Does Not Constitute Reasonable Suspicion

Absent Independent Indicia of Reliability or

Officer-Observed Confirmation of Caller's Predictions of Defendant's Future Behavior

No Reasonable Suspicion

No information re: caller's basis of knowledge

Confirmed only description of vehicle and license number

Requisite indicia of reliability of call to establish REASONABLE SUSPICION NOT ESTABLISHED

Motion to Suppress Should Have Been Granted

## Kellems v. State (Ind. Sup Ct. 2/16/06) TIP & REASONABLE SUSPICION?



Identified v. Unidentified Informant

Concerned Citizen vs. Professional Informant

False Reporting Requires Person Giving Report "Know" Report Is False

**Immediacy of Threat to Public Safety Considered** 

TOTALITY OF CIRCUMSTANCES CONTROLS

Ross v. State (Ind. Ct. App. 3/28/06)



Presence in High Crime Area

**骨 Factor** 

**☆** Reasonable Suspicion

#### FACTORS CONSIDERED

In High Crime Area
Making a "Transaction"
Speeding Away from Scene on Bicycle
Carrying Something Unusual in Hand

PC for Arrest / Clearly Reasonable Suspicion

**ABANDONED PROPERTY** 

Not Subject to Fourth Amendment Protection

### Coleman v. State (Ind. Ct. App. 5/18/06)

CI – Provides Initial Tip

CI Has Telephone Conversation with J.C.

**CI Sets Up Meeting** 

CI ID's Coleman at Predetermined meeting place

**REASONABLE SUSPICION? NO** 

Motion to Suppress Should Have Been Granted



### Payne v. State (Ind. Ct. App. 10/11/06)

#### **FACTORS TO BE CONSIDERED**

Threatening Presence – Several Officers Display of Officer's Weapon Physical Touching Language/Tone of Voice

**TEST:** Reasonable Person Feel Free to Leave?

DURATION OF DETENTION: Police Diligently
Pursue Means of Investigation Likely to
Confirm or Dispel Suspicions Quickly?



### *Davis v. State* (Ind. Ct. App. 12/11/06)

High Crime Area
Vehicle into Gas Station Lot
Second Vehicle Arrives
Passenger Vehicle #1 Into Vehicle #2
Vehicle #2 Departs

REASONABLE SUSPICION?
NO

### Greeno v. State (Ind. Ct. App. 2/27/07)

"Stop" = Investigatory Detention

Tip contained no indicia of reliability Possession of Oxycontin not a crime

Walking away (5) Reasonable Suspicion

4th Amendment Violation

Turner v. State (Ind. Ct. App. 3/10/07)

**Indiana Constitution** 

Pre-text Stops Not Per Se Unreasonable

Estimated Speed But Did Not Know Speed Limit

ARTICLE 1 SECTION 11 VIOLATED

### CONSESUAL ENCOUNTER INVESTIGATIVE DETENTION

### Bentley v. State (Ind. Ct. App. 4/27/06)

"Keep hands where I can see them"

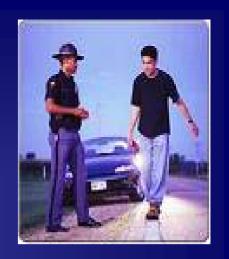
Request for ID from passenger

### NOT CONVERT CONSENUAL ENCOUNTER TO INVESTIGATIVE DETENTION

Actions by Passenger Coupled with Knowledge of Robberies in Area

**DETENTION PROPER** 

### State v. Augustine (Ind. Ct. App. 8/1/06)



#### **Exit Vehicle to Submit to SFST's**

Reasonable Suspicion
Supported Investigative Detention

### Clarke v. State (Ind. Ct. App. 9/29/06)

Anonymous Tip

Told Clark Investigating Drug Complaint

"Anything Illegal in Car?"

"Can I Search?" x 2

CONSENSUAL ENCOUNTER TO INVESTIGATORY STOP

REASONABLE SUSPICION? NO

FRUIT OF THE POISONOUS TREE HAD TO BE SUPPRESSED

# REASONABLE SUSPICION?

#### **ANONYMOUS TIPS**



### Castner v. State (Ind. Ct. App. 1/12/06)

GR: Anonymous tip alone not likely to constitute reasonable suspicion

Suitably corroborated 

Reasonable Suspicion

Tip must be reliable in assertion of illegality, not just identity of determinate person

REASONABLE SUSPICION? NO

### Castner v. State #2

Walking away from police © R.S.



In fenced-in dumpster area Jacket on ground by screwdriver CD player and CDs on dumpster

REASONABLE SUSPICION? YES

### Burkes v. State (Ind. Ct. App. 2/15/06)

Anonymous Tip (5) Reasonable Suspicion Corroborated only Innocent Portions of Tip

Person with Outstanding Warrant in presence of Defendant

"Freeze" - O.K.

**Burkes Ran** 

REASONABLE SUSPICION SUPPORTED INVESTIGATORY STOP

### Sellmer v. State (Ind. Sup. Ct. 2/16/06)

#### Anonymous Tip = R.S. only if ...

- Significant aspects of tip corroborated by police (Tip gave more than details easily obtainable by general public)
- Must demonstrate intimate familiarity with suspect's affairs and be able to predict future behavior

### Sellmer v. State (cont'd)

- "Know why we would have gotten a report of drugs in your car?"
- "In your best interest to cooperate"
- "Should not make police jump through a bunch of hoops"

#### REASONABLE PERSON WOULD CONCLUDE NOT FREE TO LEAVE

**Did Consent Save the Day?** 

No *Pirtle* Warnings Given

Motion to Suppress Should Have Been Granted

### Hardister v. State (Ind. Sup. Ct. 6/28/06)

- □ Unprovoked Flight ⑤ Mere Refusal to Cooperate
- **☼** No General Emergency Exception 4<sup>th</sup> Amend.

**Anonymous tip** 

- + Corroborating Circumstance of Flight
- + Area Known For Narcotics Traffic Reasonable Suspicion

### Hardister v. State (cont'd)

**Issue: Entry Onto Curtilage** 

Suspected Destruction of Cocaine & Exigent Circumstances

WARRANTLESS ENTRY JUSTIFIED

# PAT DOWN FOR WEAPONS



### N.W. v. State (Ind. Ct. App. 9/14/05)

For pat-down for weapons to be justified officer must be able to articulate facts to support a reasonable belief that the person officer intends to pat-down is armed and dangerous

Fact N.W. Suspected of Burglary bar Independent Basis – Sustain Pat Down?

YES

### Howard v. State (Ind. Ct. App. 3/19/07)

Traffic Stop Nor Nervousness
Provide Basis for Pat-Down Search

No Testimony Re: Concern for Officer Safety

CONCERN: Previous Advisement "I'll search you every time I see you."

PAT-DOWN NOT WARRANTED

Seizure Illegal

# PERIOD OF DETENTION



### State v. Quirk (Ind. Sup. Ct. 2/14/06)

"A combination of irrelevant conduct and innocent conduct, without more, cannot be transformed into a suspicious conglomeration."

#### PERIOD OF DETENTION UNREASONABLE

### *Wilson v. State* (Ind. Ct. App. 5/26/06)

## BRINGING IN THE DRUG DOG PERIOD OF DETENTION



### CRITICAL QUESTION: Was Traffic Stop Concluded?

If so, does reasonable suspicion exist to continue detention for investigatory purposes?

Did police diligently pursue means of investigation likely to confirm or dispel suspicions quickly?

**中 TRAFFIC STOP COMPLETED** 

**★ NO REASONABLE SUSPICION TO DETAIN**MOTION TO SUPPRESS SHOULD HAVE BEEN
GRANTED

### CONSTITUTIONAL GUARANTEES AGAINST UNREASONABLE SEARCHES AND SEIZURES

#### AMENDMENT IV UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### ARTICLE I SECTION II INDIANA CONSTITUTION

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## RECOGNIZED EXCEPTIONS TO FOURTH AMENDMENT WARRANT REQUIREMENT

#### 骨 Consent

- ⊕ Search Incident to Arrest
  - ⊕ Impound and Inventory

## FOURTH AMENDMENT WARRANT EXCEPTION

#1

### CONSENT SEARCHES

### **State v. Keller** (Ind. Ct. App. 4/10/06)

**Knock and Talk** 

Entry by False Pretenses ☑
Following Safety Search Was Violation
of Fourth Amendment

Consent by Person Who Paid for Hotel Room & VALID CONSENT

**HELD: EVIDENCE ADMISSIBLE** 

### Miller v. State (Ind. Ct. App. 5/10/06)

Pirtle Warning Required Before Consent if in Custody

But

Odor of Burnt Marijuana Coming from Vehicle

Warrantless Search Supported by Probable Cause – No Violation of Fourth Amendment

### Hirshey v. State (Ind. Ct. App. 8/23/06)

**Consent Must Be Voluntary** 

- "Warrant will be sought if consent not given"

**SCOPE OF CONSENT** 

*Navarro v. State* (Ind. Ct. App. 10/23/06)

**CONSENT MUST BE VOLUNTARY** 

Question of Fact: Determined from the Totality of the Circumstances

**Not Result of Duress or Coercion** 

More that Mere Acquiescence to Supremacy of the Law

#### **CONSENT VOLUNTARY?**

- Whether Advised of Miranda Rights Prior to Consent;
- Defendant's Degree of Education and Intelligence;
- Whether Advised of Right Not to Consent;
- Previous Encounters with Law Enforcement;
- Express or Implied Claims of Authority to Search Without Consent;
- Any Illegal Action by Officer;
- Whether Defendant was Cooperative; and
- Whether Officer Deceptive I.D. or Purpose

**CONSENT VOLUNTARILY GIVEN** 

### Friend v. State (Ind. Ct. App. 12/18/06)

Pirtle Revisited

**An Objective Test** 

Reasonable Person Would Not Feel Free to Leave

**Consent Exception Did Not Apply** 

# THRD PARTY CONSENT

ACTUAL AUTHORITY
OR

APPARENT AUTHORITY

Georgia v. Randolph (U.S. Sup. Ct. 3/22/06)

Consent by Resident #1
Refusal by Resident #2
(physically present)



HELD: Refusal by #2 Invalidated Search as to Resident #2



Seizure of Handgun and Cocaine – No Violation of Fourth Amendment Rights



### Lee v. State (Ind. Sup. Ct. 6/29/06)

ISSUE #1 Fiancée Have Authority to Consent

ACTUAL AUTHORITY # Full Access to All Rooms of House

No Steps Taken by Defendant to Deny Her Access

ISSUE #2 Search Was Within Scope of Consent Given

## SEARCH WARRANT EXCEPTION #2

#### **AUTOMOBILE EXCEPTION**



### AUTOMOBILE EXCEPTION

**Vehicle Readily Mobile** 



Probable Cause Contains Contraband or Evidence of Crime

WARRANTLESS SEARCH PERMITTED

Myers v. State (Ind. Sup. Ct. 12/21/05)

Myers v. State (Ind. Sup. Ct. 12/21/05)

Gonser v. State (Ind. Ct. App. 3/15/06)

HELD: State Failed to Prove Auto Exception Applied

### Masterson v. State (Ind. Ct. App. 3/12/06)

Issue: "Readily Mobile"?

Car Clearly Operational = Readily Mobile

PC to Believe Contraband

WARRANTLESS SEARCH PERMITTED

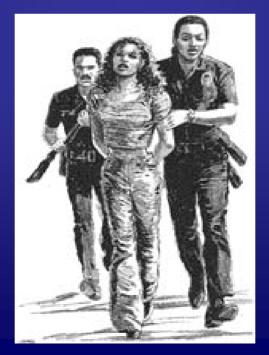
### Combs v. State (Ind. Ct. App. 8/14/06)

PC to Believe Vehicle Contained Contraband or Evidence of a Crime

SEARCH PROPER

#### **WARRANT EXCEPTION #3**

# SEARCH INCIDENT TO ARREST



### Gosner v. State (Ind. Ct. App. 3/15/06)

**ISSUE: Search Incident to Arrest?** 

**Search and Arrest Contemporaneous?** 

**Scope Limited to Area Within Arrestee's Immediate Control?** 

NO

### Fentress v. State (Ind. Ct. App. 3/30/07)

Probable cause supported arrest Subjective belief of officer – No legal effect



Allows search of person and area within arrestee's immediate control

Foil ball found on defendant's person and

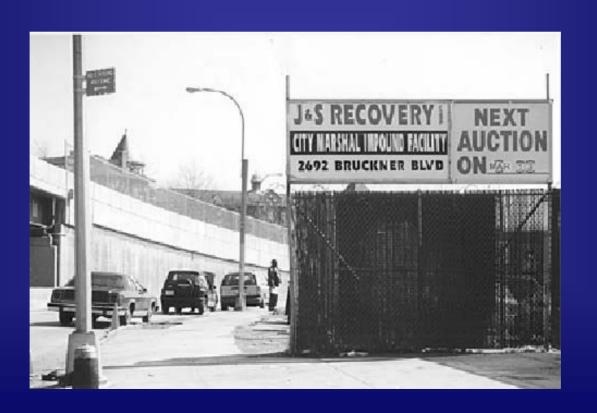
At time opened, officers had probable cause to arrest

**Cocaine Properly Admitted in Evidence** 

### **WARRANT EXCEPTION**

#4

### **IMPOUND AND INVENTORY**



Taylor v. State (Ind. Sup. Ct. 2/14/06)

**QUESTION #1: IMPOUND PROPER?** 

Part of Routine Administrative Caretaking Functions of police

or

**Authorized by Statute** 

### **Community Caretaking Function**

- Belief vehicle posed some threat or harm to community or was itself imperiled consistent with objective standards of sound policing
- Decision to impound in keeping with established departmental routine or regulation

Defendant's Car Illegally Parked?

#### **CONSIDER:**

- 1) Degree to which property upon which vehicle situated is under control of defendant; and
- 2) Length of time car would be unattended

CONCLUSION THAT VEHICLE IMPERILED NOT CONSISTENT WITH OBJECTIVE STANDARDS OF SOUND POLICING



# IMPOUND PROPER INVENTORY PROPER

Friend v. State (Ind. Ct. App. 12/18/06)

**ISSUE: INVENTORY PROPER?** 

State Must Establish Search
Conducted Pursuant to Standard
Police Procedures
More than mere statement routine
inventory required

# **State v. Winkle** (Ind. Ct. App. 1/17/07)

Search of Locked Container in Vehicle Violated Defendant's Fourth Amendment Rights

Widduck v. State (Ind. Ct. App. 2/28/07)

**Impound Proper** 

Searches At Impound Lot Preferred

NO ABUSE OF DISCRETION TO ADMIT CRACK PIPE INTO EVIDENCE

### WARRANT EXCEPTION #5

# EXIGENT CIRCUMSTANCES

#### **EXIGENT CIRCUMSTANCES**

- Risk of Bodily Harm or Death
- To Aid Person in Need of Assistance
- To Protect Private Property (Believe Being Burglarized)
- Actual or Imminent Destruction of Evidence

# Brigham City, Utah v. Stuart (U.S. Sup. Ct. 5/22/06)

**Manner of Entry Reasonable** 

Actions Reasonable Under Fourth Amendment Regardless of Officer's State of Mind

# FOURTH AMENDMENT RIGHTS NOT VIOLATED



# Trimble v. State (Ind. Sup. Ct. 2/21/06)

Officer's entry onto private property and observations (5) violation Fourth Amendment

No legitimate expectation of privacy in appearance of dog tied in area readily observable by public

Frensemeier v. State (Ind. Ct. App. 6/9/06)



### **BLOOD DRAW – OVWI**

EXIGENT CIRCUMSTANCES EXISTED NO FOURTH AMENDMENT VIOLATION

# **Baird v. State** (Ind. Ct. App. 9/26/06)



**Privacy Interest in Hillside Minimal** 

Intrusion by Law Enforcement Reasonable

# State v. Crabb (Ind. Ct. App. 10/20/06)

Reasonable Belief Person (3 year-old-child) Inside in Need of Immediate Aid



### NO BRIGHT-LINE RULE SMELL OF ETHER ALONE ALLOWS WARRANTLESS ENTRY

EXIGENT CIRCUMSTANCES JUSTIFIED WARRANTLESS ENTRY OF DEFENDANT'S RESIDENCE

### CONSTITUTIONAL GUARANTEES AGAINST UNREASONABLE SEARCHES AND SEIZURES

### AMENDMENT IV UNITED STATES CONSTITUTION

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### CONSENT

FOURTH AMENDMENT ARTICLE 1
SECTION11

State v. Keller

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Miller v. State

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# THIRD-PARTY CONSENT

FOURTH AMENDMENT ART 1 SEC 11

Starks v. State



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Lee v. State





### FOURTH ART 1 AMENDMENT SEC 11

### AUTO EXCEPTION

Masterson v. State

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### IMPOUND & INVENTORY

Taylor v. State

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### **EXIGENT CIRCUMSTANCES**

FOURTH AMENDMENT ART 1 SEC 11

Trimble v. State

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Baird v. State

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#### **DRUG DOGS**

*Marcum v. State* (Ind. Ct. App. 2/28/06)

Smell of raw and burnt marijuana sufficient to establish P.C. to search vehicle



INDEPENDENT CONFIRMATION OF MARIJUANA BY DRUG DOG NOT REQUIRED

# ENTRY ONTO PRIVATE PROPERTY

Holder v. State (Ind. Sup. Ct. 5/18/06)



### FOURTH AMENDMENT

Intrusion Upon Curtilage May be Permissible if Fits Within Recognized Exception to Warrant Requirement

# EXIGENT CIRCUMSTANCES & NEED TO PROTECT

NO VIOLATION FOURTH AMENDMENT

#### **ARTICLE 1 SECTION 11**

Odor of Ether Pervaded the Neighborhood – Actions Reasonable

# TRASIL SEARCHES



State v. Litchfield (Ind. Sup. Ct. 6/16/06)

**Indiana Constitution** 

Requires Consideration of Both

Degree of Intrusion into Subject's Ordinary Activities

and

**Basis Upon Which Officer Selected Subject of Trash Seizure** 

- #1 Trash must be retrieved in substantially same manner as trash collector would use
- #2 Officer must posses reasonable articulable suspicion subject engaged in violation of law that might reasonably lead to finding evidence in trash

HELD: List from DEA
DID NOT provide reasonable
articulable individualized
suspicion to seize and
search Litchfield's trash

MOTION TO SUPPRESS PROPERLY GRANTED

Love v. State (2/14/06)

State v. Turner (3/10/06)

State v. Harmon (5/9/06)

Richardson v. State (6/12/06)

Edwards v. State (8/17/06)

State v. Cook (8/25/06)

Eshelman v. State (1/10/07)

# MISCELLANEOUS ISSUES

# SUSPICIONLESS SEARCH OF PAROLEE

Sampson v. California (U.S. Sup. Ct. 6/19/06)

#### **ABANDONED PROPERTY**

Ross v. State (Ind. Ct. App. 3/28/06)

### **UNIFORM – BADGE – MARKED CAR**

I.C. 9-30-2-2

Maynard v. State (Ind. Ct. App. 1/31/07)

*Davis v. State* (Ind. Ct. App. 12/11/06)



# KNOCK AND TALK PLAIN VIEW

Redden v. State (Ind. Ct. App. 7/12/06)

### FORCE TO RECOVER EVIDENCE

Grier v. State (Ind. Ct. App. 10/31/06)

#### SEIZURE IN SCHOOL

*T.S. v. State* (Ind. Ct. App. 3/27/07)

# SEARCHWARRANT SEARCHES

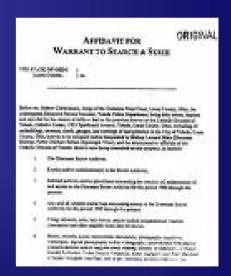
### SEARCH WARRANT SEARCHES

Prerequisites for a Search Warrant

**Getting the Warrant** 

**Execution of the Warrant** 

Special Issues



## PREREQUISITES FOR A SEARCH WARRANT

#1 PROBABLE CAUSE

#### PROBABLE CAUSE

BASIC TEST: Whether given all the circumstances there is a fair probability that contraband or evidence of a crime will be found in a particular place

Item searched for is probably in place to be searched

# SOURCES OF INFORMATION FOR PROBABLE CAUSE

Facts in Knowledge of Affiant or Information Based on Hearsay

I.C. 35-33-5-2(a)(3)

Information Based on Hearsay
Informant's Truthfulness
Informant's Reliability
Basis of Informant's Knowledge

Illinois v. Gates (U.S. Sup. Ct. 1983)

### **HEARSAY INFORMANTS**

2 Categories -

**Cooperative Citizens** 

**Professional Informants** 

and

**Anonymous Tipsters** 

*Pawloski v. State* (Ind. Sup. Ct. 1978)





# PROFESSIONAL INFORMANTS AND ANONYMOUS TIPSTERS

Reliability Must Be Established

# Establishing Reliability of Hearsay Informant

- \* Track Record Reliable Information
  - Declarations Against Penal Interest
- \* Basis for Informant's Knowledge
  - Prediction of Suspect's Conduct not Easily Predicted

#### TRACK RECORD - RELIABLE INFORMATION



Membres v. State (Ind. Ct. App. 7/31/06)

No Precise Credibility Ratio

3:40 NOT SUFFICIENT

Information Provided Did Not Support Search

**GOOD FAITH EXCEPTION Did Not Save Search** 

Trans. Granted

## DECLARATIONS AGAINST PENAL INTEREST

Snover v. State (Ind. Ct. App. 11/30/05)

State v. Spillers (Ind. Sup. Ct. 5/23/06)

Hirshey v. State (Ind. Ct. App. 8/23/06)



## Snover v. State (Ind. Ct. App. 11/30/05) STATEMENT AGAINST PENAL INTEREST

Statement must have so far tended to subject the declarant to civil or criminal liability that reasonable person would not have made it

Drugs already found
Statement not against penal interest

No other evidence informant credible Probable Cause Did Not Exist

SAVED BY GOOD FAITH EXCEPTION

## State v. Spillers (Ind. Sup. Ct. 5/23/06)

No Track Record
Info = Address and Make of Car Not Sufficient
No Corroboration – Defendant = Source of Drugs

Informant caught "red-handed" with drugs

Statement Not Against Penal Interest Probable Cause Absent

GOOD FAITH EXCEPTION SAVED
THE SEARCH

## Hirshey v. State (Ind. Ct. App. 8/23/06)

Defendant already arrested for dealing methamphetamine

Statement not against penal interest Search Warrant Lacked Probable Cause

## GOOD FAITH EXCEPTION DID NOT SAVE SEARCH WARRANT

## BASIS OF INFORMANT'S KNOWLEDGE

**State v. Fridy** (Ind. Ct. App. 2/20/06)

Ramsey v. State (Ind. Ct. App. 9/1/06)

*Ware v. State* (Ind. Ct. App. 1/9/07)

State v. Foy (Ind. Ct. App. 3/19/07)



## **State v. Fridy** (Ind. Ct. App. 2/20/06)

#### ISSUE: NON-DISCLOSURE OF IDENTITIES OF CI's

Hearsay Reliable #

- 1.) Based on Personal Knowledge
- 2.) Statements Against Penal Interests

Sufficient Corroboration Overcame Hearsay Hurdle

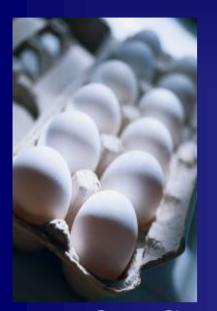
SANCTION FOR NON-DISCLOSURE: Omit Uncorroborated Hearsay

Ramsey v. State (Ind. Ct. App. 9/1/06)

Statements Against Penal Interest
Statements Based on Personal Knowledge

+ Statements Corroborated by Law Enforcement

SUFFICIENT TO ESTABLISH CREDIBILITY OF CI



## *Ware v. State* (Ind. Ct. App. 1/9/07)

Confirmation of easily obtained facts and conditions insufficient to establish credibility of hearsay informant

CORROBORATED FACTS CONSTITUTED SUFFICIENT EVIDENCE TO SUPPORT PROBABLE CAUSE

### Ware v. State (cont'd) ISSUE #2: OMITTED INFORMATION

To Invalidate Search Warrant Defendant Must Show:

- 1. Police omitted facts with intent or in reckless disregard of whether omission made affidavit misleading and
- 2. If affidavit had disclosed omitted information, affidavit would not have supported probable cause finding

**HELD: SEARCH WARRANT VALID** 

**Evidence Properly Admitted** 

## State v. Foy (Ind. Ct. App. 3/19/07)

Hearsay from LEO's, Emergency and Medical Professionals, and 911 Caller

Probable cause determined upon basis of collective information known to law enforcement as a whole

Trustworthiness of Hearsay Sufficiently Shown

# PREREQUISITES FOR A SEARCH WARRANT #2

DESCRIPTION OF LOCATION
TO BE SEARCHED

DESCRIPTION OF PROPERTY OR PERSON SOUGHT

Affidavit must "particularly describe" things to be searched for I.C. 35-33-5-2

Not have to be exact description *Phillips v. State* (Ind. Sup. Ct. 1987)

Warrant vesting unbridled discretion in officer where to search or what to seize – VOID

Warren v. State (Ind. Sup. Ct. 2002) Hestor v. State (Ind. Ct. App. 1990)

### State v. Foy (Ind. Ct. App. 3/19/07)

Law enforcement to search residence, outbuildings, motor vehicles and defendant for ALL "TRACE EVIDENCE"

Held: Search Warrant Not Invalid as a General Warrant
Circumstances and nature of crime helped define parameters of relevant evidence

If Description as Specific as Case Permits and

**Probable Cause Shown** 

**WARRANT WILL BE UPHELD** 

## GETTING THE SEARCH WARRANT

Affidavit or Sworn Testimony
I.C. 35-33-5-2
I.C. 35-33-5-8

State v. Brown (Ind. Ct. App. 1/17/06)



### Sworn Testimony Not Given Search Warrant Invalid

## GOOD FAITH EXCEPTION DID NOT SAVE WARRANT

#### **FILING AFFIDAVIT & SEARCH WARRANT**

HISTORICALLY: Thompson v. State (Ind. Sup. Ct. 1921)

Bowles v. State (Ind. Ct. App. 2005)

State v. Mason (Ind. Ct. App. 2005)

State v. Rucker (Ind. Ct. App. 2/28/07)

Held: Failure to file affidavit and warrant before conducting search

Search Warrant Not Supported by Oath or Affirmation



## SERVING THE SEARCH WARRANT KNOCK & ANNOUNCE

#### **HISTORICALLY:**

15-20 seconds knock to entry OK

Willington v. State (Ind. Ct. App. 2003)

15-20 seconds knock to entry OK

U.S. v. Banks (U.S. Sup. Ct. 2003)

#### KNOCK AND ANNOUNCE

Hudson v. Michigan (U.S. Sup. Ct. 6/15/06)

United States Supreme Court Decision in Hudson v. Michigan Abrogates Requirement Police Officers "Knock and Announce" Before Entering Premises with a Search Warrant

Indiana Trial Lawyers – VERDICT

HELD: Violation of knock and announce rule DOES NOT require suppression of evidence found

# MISCELLANEOUS ISSUES

# ANTICIPATORY SEARCH WARRANTS United States v. Grubbs (U.S. Sup .Ct. 3/21/06)

Two Prerequisites of Probability Must be Satisfied:

- 1. If triggering event occurs fair probability exists contraband or evidence of crime will be found; and
- 2. Probable cause to believe triggering event will occur

**Delivery I** Established Probable Cause for Search

Triggering Condition Does Not Have to be set Forth in Warrant Itself

**ERROR TO INVALIDATE THE WARRANT** 

#### **GOOD FAITH EXCEPTION**

**Snover v. State** (Ind. Ct. App. 11/30/05)

**State v. Brown** (Ind. Ct. App. 1/17/06)

State v. Spillers (Ind. Sup. Ct. 5/23/06)

Membres v. State (Ind. Ct. App. 7/31/06) trans. granted

U.S. v. Leon (1984)

I.C. 35-37-4-5

### The Exception

Evidence Obtained by Warrant Later Deemed Invalid Admissible If ...

Evidence obtained in good faith & obtained pursuant to a search warrant properly issued upon a determination of probable cause by a neutral and detached magistrate free of obvious defects other than non-deliberate errors and that was reasonably believed by LEO executing the warrant to be valid

### **EXCEPTION NOT APPLY IF...**

- 1. Magistrate misled by information in affidavit affiant knew false or would have known false except for reckless disregard for truth; or
- 2. Based on affidavit so lacking in indicia of probable cause as to render official belief of existence entirely unreasonable

Snover v. State
Warrant not Supported by P.C. – G.F.E. Saved
Search

State v. Brown
Lack of Sworn Testimony – G.F.E. Not Save
Search

State v. Spillers
Warrant not Supported by P.C. – G.F.E. Saved
Search

Members v. State trans. granted
Warrant not Supported by P.C. – G.F.E. Did Not
Save Search